

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

CAROLYN DIANA DAVIS,
*as the Administratrix of the
Estate of Charles Timothy Davis,*

Plaintiff,

v.

CIVIL ACTION NO. 5:18-cv-00530

THE UNITED STATES,

Defendant.

SCHEDULING ORDER

The Court has reviewed the *Report of the Parties' Rule 26(f) Planning Meeting* (Document 18) and **ORDERS** that the Scheduling Conference previously scheduled for August 22, 2018, is **CANCELLED**.

Pursuant to Fed. R. Civ. P. 16(b) and L.R. Civ. P. 16.1(e), it is **ORDERED** that this case shall proceed as follows:

1. **Amendments and Joinder:** The amendment of any pleading and the joinder of any party shall be completed no later than **October 9, 2018**.
2. **Discovery and Depositions:** The parties shall complete all discovery requests by **May 6, 2019**. All discovery, including disclosures required by Fed. R. Civ. P. 26(a)(2), but not disclosures required by Fed. R. Civ. P. 26(a)(3), shall be completed by **June 3, 2019**. The last date to complete depositions shall be **July 1, 2019**. Pursuant to L.R. Civ. P. 26.1(c), the Court

adopts and approves the agreements of the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and depositions). **(PLEASE NOTE THAT DISCLOSURES AFTER ESTABLISHED DEADLINES TO WHICH AN OBJECTION IS MADE WILL BE EXCLUDED FROM EVIDENCE UNLESS OPPOSING COUNSEL AGREED TO THE UNTIMELY DISCLOSURE OR THE COURT GRANTED AN EXTENSION OF THE DEADLINE.)**

3. **Expert Witnesses:** The party bearing the burden of proof on an issue shall make the disclosures of information required by Fed. R. Civ. P. 26(a)(2)(A)-(C) for that issue to all other parties or their counsel no later than **April 1, 2019**. The party not bearing the burden of proof on an issue shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A)-(C) for that issue to all other parties or their counsel no later than **May 1, 2019**. All parties shall provide the disclosures required by Fed. R. Civ. P. 26(a)(2)(A)-(C) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under Fed. R. Civ. P. 26(a)(2)(B) and (C), no later than **May 20, 2019**.

4. **Summary Judgment and Other Dispositive Motions:** All dispositive motions, except those under Rule 12(b), together with depositions, admissions, documents, affidavits, or other such matter in support thereof, shall be filed and served by **August 5, 2019**. Any responses shall be filed and served within fourteen (14) days from the date of service of the motion, and any replies shall be filed and served within seven (7) days from the date of service of the response. Any motion must be supported by a memorandum of law at the time filed or submitted. If any motion, memorandum in support, response, or reply, inclusive of all attachments, exceeds fifty (50) pages in length, a hard copy of such materials shall be submitted to the presiding District

Judge at the time of filing. **(PLEASE NOTE THAT ANY RESPONSE OR OTHER DOCUMENTS FILED AFTER THE DEADLINE FOR FILING, WITHOUT LEAVE OF COURT, WILL NOT BE CONSIDERED.)**

5. **Settlement Meeting:** The parties and their lead trial counsel shall meet and conduct negotiations looking toward the settlement of the action, and counsel shall be prepared at the Pretrial Conference to certify that they have done so. Counsel for the Plaintiff shall take the initiative in scheduling the settlement meeting, and all other counsel shall cooperate to effect such negotiations. The Settlement Meeting may be held as early as desired, but must be held **at least forty-five (45) days prior** to the Pretrial Conference.

6. **Mediation:** Mediation is mandatory, and is ordered pursuant to, and shall be held in compliance with, the provisions of L.R. Civ. P. 16.6. The parties shall select the mediator in compliance with L.R. Civ. P. 16.6.2. Counsel for the Plaintiff shall take the initiative in scheduling the mediation, and all other counsel shall cooperate to effect the same. The mediation scheduled by the parties must be concluded **at least thirty (30) days prior** to the Pretrial Conference.

7. **Rule 26(a)(3) Disclosures:** If the case is not settled at the Settlement Meeting, at Mediation, or otherwise, and if there is no order or stipulation to the contrary, counsel and unrepresented parties shall make all Rule 26(a)(3) disclosures **at least thirty (30) days prior** to the Pretrial Conference.

8. **Motions in Limine:** All motions in limine shall be filed and served by **September 6, 2019**, with responses due by **September 13, 2019**. Replies shall not be filed, and will not be considered, without leave of the Court. **(PLEASE NOTE THAT ANY MOTION,**

RESPONSE OR OTHER DOCUMENTS FILED AFTER THE DEADLINE FOR FILING, WITHOUT LEAVE OF COURT, WILL NOT BE CONSIDERED.)

9. **Proposed Integrated Pretrial Order:** The Plaintiff's portion of the proposed integrated pretrial order shall be submitted to opposing counsel by **September 30, 2019**, who shall then prepare and complete the opposing portion thereof and submit the proposed integrated pretrial order, signed by all counsel, to the Court for entry no later than **October 7, 2019**. The proposed integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in L.R. Civ. P. 16.7(b).

10. **Proposed Findings of Fact and Conclusions of Law:** The original and one copy of proposed findings of fact and conclusions of law on substantive theories of recovery or defense and damages shall be exchanged by counsel, filed with the Clerk of the Court, and e-mailed to the presiding District Judge by **October 11, 2019**, according to instructions provided by the Court's law clerk. The respective submissions provided to chambers shall be in Word compatible format.

11. **Pretrial Conference/Final Settlement Conference:** A combined Pretrial Conference/Final Settlement Conference, attended by all unrepresented parties and by lead trial counsel for each represented party, shall be held on **October 17, 2019, at 9:00 a.m.** Lead trial counsel shall be fully prepared to discuss all aspects of the case, and individuals with full authority to settle the case for each party shall be present in person.

12. **Bench Trial:** Trial of this action shall be held on **October 28, 2019, at 9:00 a.m.**, before the undersigned.

13. **Stipulations**: All stipulations regarding extensions of time to file pleadings and any other stipulations which might affect deadlines contained in this order are subject to Court approval.

14. **Failure to Appear or Negotiate**: Should lead trial counsel fail to appear at any pre-trial conference or otherwise fail to meet and confer in good faith with opposing counsel as required in the "Settlement Meeting" paragraph above, or should a party or his authorized representative fail to appear or be available at any conference or otherwise fail to meet and confer in good faith as required in the "Settlement Meeting" paragraph above, appropriate sanctions may be imposed, including, but not limited to, sanctions by way of imposition of attorney fees against the attorney and/or his client pursuant to Fed. R. Civ. P. 16(f).

All proceedings shall be held by the Court at the Robert C. Byrd United States Courthouse and Federal Building, 110 North Heber Street, Beckley, West Virginia.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: August 6, 2018



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA